

JUN 19 2007

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FEDERAL ELECTION
COMMISSION
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BEFORE THE FEDERAL ELECTION COMMISSION

2007 JUN 19 A 11: 26

SENSITIVE

In the Matter of

MUR 5861

Bruderly for Congress

CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated

are forwarded to the Commission with a recommendation for dismissal. The

Commission has determined that pursuing low-rated matters compared to other higher rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.

The Office of General Counsel scored MUR 5861 as a low-rated matter. In this case, the complainant alleges Bruderly for Congress committed reporting violations by failing to correct errors in amended reports and for reporting the incorrect cash on hand figures. In particular, during the 2004 election cycle the complainant alleges that Bruderly for Congress filed 37 amended reports, which carried incorrect cash-on-hand figures, for the 23 initial reports required of congressional candidates during the relevant time period. The complainant notes that in August 2006, Bruderly for Congress reported cash on hand as \$5,177.65, when it should have been \$4,526.29. The complainant contends that miscalculations on earlier reports resulted in calculation errors on subsequent reports. In addition, it appears that Bruderly for Congress failed to respond to a Request for Additional Information ("RFAI") from the Reports Analysis Division ("RAD") in 2005. The complaint also cites to a violation of 2 U.S.C. § 439(a) (use of contributed amounts for certain

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1 purposes), but does not allege any facts to show that Bruderly for Congress may have used
2 contributions in a prohibited manner.

3 In his response, Mr. Bruderly directly addresses the complainant's first two sets of
4 figures in the complaint by explaining the distinction between net operating expenditures and
5 the itemized disbursement page. Mr. Bruderly also indicates that the discrepancies
6 highlighted by RAD's 2005 RFAI were corrected in subsequent amended reports. Lastly,
7 Mr. Bruderly suggests that the complainant's calculations were incorrect, which led him to
8 the erroneous assumption that subsequent reports that were filed by Bruderly for Congress
9 were flawed.

10 It appears that the total amount at issue in Bruderly for Congress's amended reports is
11 less than \$1,000. Thus, in light of the de minimis nature of the allegations presented in
12 MUR 5861 and in furtherance of the Commission's priorities and resources, relative to other
13 matters pending on the Enforcement docket, the Office of General Counsel believes that the
14 Commission should exercise its prosecutorial discretion and dismiss the matter. *See Heckler*
15 *v. Chaney*, 470 U.S. 821 (1985).

16 **RECOMMENDATION**

17 The Office of General Counsel recommends that the Commission dismiss MUR
18 5861, close the file effective two weeks from the date of the Commission vote, and approve
19 the appropriate letters. Closing the case as of this date will allow CELA and General Law
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and Advice the necessary time to prepare the closing letters and the case file for the public record.

Thomasenia P. Duncan
General Counsel

6/10/07
Date

BY:

Gregory R. Baker
Special Counsel
Complaints Examination
& Legal Administration

Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration

April Sands
Attorney

Attachment:
Narrative in MUR 5861

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5 **MUR 5861**

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7 **Complainant:** Peter C.K. Enwall

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9 **Respondents:** Bruderly for Congress and
10 David Bruderly as Treasurer

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12 **Allegations:** The complainant alleges Bruderly for Congress committed reporting
13 violations by failing to correct errors in amended reports, and for reporting the incorrect
14 cash on hand figures. In particular, the complainant is concerned Bruderly for Congress
15 filed 37 amended reports for the 23 initial reports required of congressional candidates
16 during the relevant time period. According to the complainant's calculations, most of
17 Bruderly for Congress's reports carried over the incorrect cash on hand figures: in August
18 2006, Bruderly for Congress reported cash on hand as \$5,177.65, when it should have
19 been \$4,526.29. The complainant contends that these miscalculations on earlier reports
20 have resulted in calculation errors on subsequent reports. In addition, it appears that
21 Bruderly for Congress failed to respond to a Request for Additional Information (RAFI)
22 from RAD in 2005. The complaint also cites a violation of 2 U.S.C. § 439(a) (use of
23 contributed amounts for certain purposes), but does not allege any facts to show that
24 Bruderly for Congress may have used contributions in a prohibited manner.

25
26 **Response:** In response, Mr. Bruderly directly addresses the complainant's first two sets
27 of figures in the complaint by explaining the distinction between net operating
28 expenditures and the itemized disbursement page. Mr. Bruderly also indicates that the
29 discrepancies highlighted by the RAD 2005 RAFI were corrected in amended reports.
30 Finally, Mr. Bruderly explains that it is the complainant's arithmetic that is incorrect,
31 which has led to the erroneous assumption that subsequent reports filed by Bruderly for
32 Congress were also incorrect.

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34 **Date complaint filed:** October 24, 2006

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36 **Response filed:** November 20, 2006

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